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IDAHO BOARD
OF PHARMACY

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

Misty,
Please send copies back to NABP & file the originals.

February 22, 2013

Mark Johnston, Executive Director
Idaho State Board of Pharmacy
P.O. Box 83720
Boise, ID 83720-0067

Re: MOU

Dear Mark:

At the request of Nicole McKay, I am forwarding two copies of the Memorandum of Understanding Between the National Association of Boards of Pharmacy and the State of Idaho Relating to Software for its Prescription Drug Monitoring Program.

Please sign and mail a copy to:

Kathy Dunne, Paralegal
National Association of Boards of Pharmacy
1600 Feehanville Drive
Mount Prospect, IL 60056

If you have any questions concerning this matter please contact Nicole.

Thank you.

Sherrie Bengtson
Legal Secretary
Contracts and Administrative Law Division

Enc.

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Contracts & Administrative Law Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 854-8070
Located at 954 W. Jefferson, 2nd Floor

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OFFICE OF THE ATTORNEY GENERAL
CONTRACTS & ADM LAW DIVISION

FEB 21 2013

nabp

**National Association of Boards of Pharmacy**

*1600 Feehanville Drive • Mount Prospect, IL 60056-6014*
*Tel: 847/391-4406 • Fax: 847/391-4502*
*Web Site: www.nabp.net*

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**MEMORAUNDUM OF UNDERSTANDING**

**Between the National Association of Boards of Pharmacy**

**and the**

**State of Idaho Relating to Software for its Prescription Drug Monitoring Program**

## Purpose

The purpose of this memorandum of understanding (MOU) is to describe the terms under which the National Association of Boards of Pharmacy (NABP), located at 1600 Feehanville Drive, Mount Prospect, IL 60056, will provide Prescription Monitoring Program Software ("Software") services to the State of Idaho, State Board of Pharmacy ("State"), located at 1199 W. Shoreline Lane, Suite 303, Boise, ID 83702-9103.

## Recitals

The State prescription drug monitoring program (PMP) collects data on controlled substances dispensed in Idaho and permits authorized users to access data for controlled substances that are dispensed to patients. "Authorized Users" is defined to mean those individuals set forth in Idaho Code Section 37-2726. The purpose of this program is to assist in identifying illegal activity related to the dispensing of controlled substances , prevent diversion, and protect public health and safety, as set forth in Idaho Code Section 37-2730A.

Many state prescription monitoring programs are expensive to operate, difficult to access and use, have complicated registration processes and lack functionality needed to effectively leverage the important data that is within each prescription monitoring program. NABP wishes to provide Software to state prescription monitoring programs to help address such prescription monitoring program challenges and to further its mission to support its member boards of pharmacy in establishing uniform standards to protect the public health and safety.

The State would like to utilize the Software to enhance the ease of use, functionality, and utilization of the PMP.

NABP is a 501(c)(3) non-profit organization.

NABP has contracted with a solution provider, currently Appriss, Inc., to develop the Software at no cost to State as provided herein, and anticipates that the Software will be launched and available to participating states in the first quarter of 2013.

In consideration of NABP developing the Software for the State at no cost, State agrees to utilize the Software developed by NABP for management of the PMP upon delivery and installation. NABP and its solution provider shall access PMP data solely for the performance of its duties and services under this MOU and are subject to the terms and conditions of this MOU, including confidentiality provisions.

For such good and valuable consideration, receipt of which the Parties acknowledge, the Parties agree as follows:

**NABP Responsibilities**

1. NABP is responsible for developing and maintaining the functionality of the Software.

2. NABP agrees to provide the State with a limited, non-exclusive, non-transferrable license to use the Software and any updates for the purposes permitted herein or as NABP may authorize in writing from time to time.

3. NABP is responsible for developing and maintaining the Software in accordance with applicable statutes and regulations and industry standards applicable to the Software.

4. NABP is responsible for implementing reporting functionality in the Software so the State may access statistical reports regarding usage of State PMP information.

5. NABP may work with one or more solution providers, now or in the future, to discharge its responsibilities under this MOU, provided that any solution provider will be bound by the terms of this MOU or any subsequent agreement executed between NABP and State for utilization of the PMP software.

6. NABP and its solution provider(s) will not use any protected health information and/or personally identifiable patient information that is transmitted through the Software for any purpose other than that which is required to carry out the terms of this MOU. PMP data shall not be released for any purpose other than as set forth in Idaho Code Section 37-2730A and to those authorized users set forth in Idaho Code Section 37-2726. Further, NABP and its vendor(s) do not claim any ownership interest in such information.

7. NABP is responsible for designating a contact person(s) to assist PMP authorized users if there are questions about the Software and to provide technical support.

8. NABP shall indemnify, defend and hold harmless the State, its officers, agents and employees from any liability, complaints, investigations, claims, lawsuits, losses, damages, and the like, including third party claims, caused by or arising out of but only to the extent that NABP or its solution provider is negligent or wrongful in its performance, acts or omissions under this MOU or to the extent relating to claims that an NABP employee, agent, or contractor failed to comply with state or federal laws or rules applicable to PMP information in performance of this MOU.

9. Except as otherwise described herein, NABP is not responsible for use of the Software or PMP information by any user, whether authorized by the State or not, or a State employee, agent or contractor.

10. NABP will cover all costs associated with the development of Software, including upgrade costs for three (3) years from the date the system goes "live."

11. The initial release of the Software will include: newest ASAP standards, frequent data collection, automated error correction, automated registration, unsolicited reports, ability to identify unique individuals and questionable prescription filling practices, standardized reports, fuzzy logic searches, mapping capabilities, ability to produce de-identified data, interoperability with state PMPs, integration into healthcare systems, and analytical tools/reporting.

12. NABP will cover all annual participation and maintenance costs for states utilizing the Software for three (3) years from the date that the system goes "live." At least one (1) year prior to this date, NABP will notify states whether it will continue bearing all costs of state participation. If the state will be required to pay any part of the participation and maintenance fees, NABP will so notify the state of the estimated maximum cost for participation for the next two (2)-year period, giving a one (1)-year notice of potential future costs to the state.

13. Through its solution provider, NABP will offer customer service and technical support for the Software twenty-four (24) hours per day and seven (7) days per week, at no cost to State, for a period of three (3) years from the date the system goes "live."

14. If this MOU is terminated for any reason, NABP will securely return the PMP data to the state within fifteen (15) business days and in a manner and form as agreed upon by the Parties.

15. If this MOU is terminated for any reason, NABP retains all right, title, interest and ownership in the Software and State agrees to return all copies of such Software to NABP.

16. NABP shall maintain insurance in the types and amounts necessary to provide adequate coverage for the execution of its duties as set forth in this MOU. NABP shall contract and require its solution providers to maintain Technology Errors and Omissions and Cyber Risk insurance in amounts necessary to provide adequate coverage for the operation of Software as provided herein.

**State Responsibilities**

1. State is responsible for timely providing NABP with the information required in order to develop and maintain the Software under this MOU, which may include, but not be limited to, requirements for access to and use of State PMP information (Requirements). Such Requirements are incorporated into this MOU as Attachment A. The State is responsible for timely notifying NABP of changes to such Requirements.

2. State is responsible for ensuring that its Requirements for access to and use of State PMP information comply with all applicable state and federal laws and rules.

3. State is responsible for ensuring its employees, agents, contractors, and affiliates comply with state and federal laws and rules applicable to use of the Software and prescription monitoring program data and information.

4. To the extent allowed by law, State is responsible for complaints, investigations, claims, lawsuits, losses, damages, and the like, relating to claims that a State employee, agent, contractor, or affiliate failed to comply with state or federal laws or rules applicable to prescription monitoring program data or information in the performance of this MOU, including but not limited to access or use of prescription monitoring program information.

5. State is responsible for handling complaints, investigations, or the like, and any disciplinary or enforcement matters concerning claims that an authorized user of the PMP in Idaho failed to comply with state or federal laws or rules applicable to prescription monitoring program data or information.

6. State is responsible for ensuring that no other state's PMP information is added to any State information Software or database except for an image of state PMP information that has been validly requested through the Software. The State will securely store such image online and it will be securely available to the authorized requestor for thirty (30) days. Thereafter, the State may retain the image indefinitely in a secure database with

access restricted to only those authorized State employees or staff who have a legitimate State need to access or use such image.

7. If another state files a complaint against a State-authorized user for failure to comply with applicable state or federal laws or rules or fails to otherwise comply with any requirement for access or use of PMP information, or the Software requirements, State agrees to investigate such complaint and is responsible for the cost of such investigation.

8. State agrees to collaborate with NABP to implement the Software for its PMP.

9. State is responsible for designating a contact person(s) to assist NABP if there are questions about Software implementation or State requirements relating to the Software .

10. State authorizes NABP and its solution provider(s) to use the PMP data for purposes of providing analysis to State-authorized end users of the PMP who may consider such analyses when using their professional judgment in providing services to patients.

11. State agrees not to assign, transfer, sell, sublicense, or lease the license to the Software or do any act that would interfere with NABP's ownership of the Software. State further agrees not to disassemble, re-manufacture, modify, create derivative works, decompile, reverse engineer, or otherwise misappropriate the Software or any of the intellectual property related to the Software.

12. This MOU shall in no way or manner be construed so as to bind or obligate the State beyond the term of any particular appropriation of funds by the State Legislature or United States Congress as may exist from time to time. The State reserves the right to terminate the MOU if, in its sole judgment, the State legislature or United States Congress fails, neglects or refuses to appropriate sufficient funds as may be required for the State to continue in the MOU or if the Executive Branch mandates any cuts or holdbacks in spending. Any such termination shall take effect on thirty (30) days' prior notice and be otherwise effective as provided in this MOU.

**Information Disclaimer**

PMP data is provided "as is," meaning as it is provided by pharmacies to the State and maintained by the State. PMP information that is accessed through, used by, or provided by the Software is provided "as is," meaning as it is received from the State. There is no guarantee from State or NABP that such information is complete, accurate, current, or reliable and the Parties disclaim all warranties and guarantees regarding such PMP data .

**Term and Termination**

1. This MOU is effective as of the date of last signature, below, and remains in effect for one (1) year from the effective date. Thereafter, the MOU will automatically renew annually for consecutive one (1) year periods until either Party provides the other with thirty (30) days prior written notification of termination.

2. The State may terminate this MOU at any time by providing thirty (30) days prior written notice of termination.

3. NABP may terminate this MOU at any time by providing ninety (90) days prior written notice of termination to State.

4. In the event of a material breach of this MOU, or suspected breach of secure PMP information, either Party may immediately terminate this MOU by providing written notice to the other Party.

**Indemnification**

Each Party to this MOU shall be responsible for the negligent acts, omissions, or misconduct of its officers, agents, employees, contractors and affiliates. Except as specifically set forth in paragraph 8 "NABP Responsibilities," neither Party is liable to the other or any third party for any consequential, indirect, special, or incidental damages, including but not limited to lost profit, loss of goodwill, loss of use, however caused whether or not the possibility of such damages was disclosed to a Party or could have been reasonably foreseen by a Party.

**Assignment**

The Parties shall not assign or subcontract the whole or any part of this MOU without the other Party's prior written consent.

**Force Majeure**

Neither Party shall be liable for delay or failure in performance of any of its obligations under this MOU when such delay or failure arises from events or circumstances beyond the reasonable control of such Party, including, without limitation, acts of God, fire, flood, war, explosion, sabotage, terrorism, embargo, civil commotion, acts or omissions of any government entity including but not limited to termination of access to or use of PMP data, supplier delays, labor disputes, communications or power failure that are not caused by a Party or its contractors, equipment or software malfunction not caused by a Party or its contractors and which are of a general nature within commerce (i.e., a general failure of the Windows® Operating System or software, Oracle® or PMP software, the Internet or similar type of failure).

**Notice**

Any notices or other communications that are required or that may be given by either Party to the other Party under this MOU, shall be in writing and must be sent by private courier service, in a trackable manner with a verified delivery receipt, or by registered or certified mail, postage prepaid, and addressed to the Party representative, as stated herein or as a Party may designate from time to time, or by FAX or e-mail, however, the original must be sent either by private courier service, in a trackable manner with a verified receipt, or by registered or certified mail, postage prepaid, and addressed to the Party representative as stated herein, or as a Party may designate from time to time.

**Miscellaneous**

1. This MOU, including all accompanying Attachments, constitutes and expresses the entire MOU and understanding between the Parties regarding all the matters herein referred to, all previous discussions, promises, representations, and understandings relative thereto, if any, between the Parties regarding the subject matter herein.

2. The Parties may amend or revise this MOU so long as such changes are agreed to in writing by the Parties and executed by the designated individuals authorized to amend the MOU.

3. Under this MOU, Parties agree that NABP will perform as an independent contractor, and not as an agent or employee of the State.

4. NABP agrees to comply with all applicable state and federal laws and regulations concerning non-collusion and bidding, employment, including equal opportunity, prohibitions on hiring illegal immigrants, use of the e-Verify system and anti-discrimination laws and rules, the American with Disabilities Act, and drug-free workplace laws and rules.

5. NABP and the State bind their agents and/or designees to all the terms and conditions of this MOU.

6. The invalidity of any section, subsection, clause or provision of this MOU shall not affect the validity of the remaining sections, subsections, clauses or provisions of this MOU.

7. Nothing herein, express or implied, is intended to or shall confer upon any other person or entity any right, benefit, or remedy of any nature whatsoever under or by reason of the MOU.

8. The Parties agree to comply with all laws and rules applicable to the performance of this MOU.

The undersigned warrant that they are authorized representatives of their respective organizations and that they are authorized to enter into this MOU and bind their respective organizations to its terms and, in the case of the State, the State, to its terms.

**National Association of Boards of Pharmacy**

**By:** _____

**Carmen A. Catizone, MS, RPh, DPh**

**Executive Director/Secretary**

**Date:** 18. Feb. 13

**State of Idaho**

**Board of Pharmacy**

**By:** _____

**Mark Johnston, Executive Director**

**Date:** 2/20/13